

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
DISTRICT COUNTY 47 HEALTH AND  
WELFARE FUND, *et al.*,

Civil Action No. 2:07-cv-01968-RK

v.

PURDUE PHARMA L.P. and THE PURDUE  
FREDERICK COMPANY INC.

**SUPPLEMENT TO DEFENDANTS' MOTION TO TRANSFER THIS ACTION  
TO THE SOUTHERN DISTRICT OF NEW YORK**

Defendants Purdue Pharma L.P. and The Purdue Frederick Company Inc. ("Purdue") submit this supplemental memorandum to advise the Court of recent developments in *New Mexico UFCW Union's and Employers' Health & Welfare Trust Fund v. Purdue Pharma L.P.*, No. 07-6916 (S.D.N.Y. filed Aug. 1, 2007), of which Purdue was not aware when it filed this motion.

The recently filed *New Mexico UFCW* complaint was initially referred to Judge Stein as "possibly related to" actions in the MDL proceeding after the *New Mexico UFCW* plaintiff designated the case as "related to" the antitrust cases in that proceeding. (Civil Cover Sheet, *New Mexico UFCW* (Ex. 11).) The *New Mexico UFCW* plaintiff stated that they "alleged actions taken by Defendants" that "were aimed at the same goal" alleged in the MDL cases – "increasing market share and profits of OxyContin." (*Id.*) On August 6, Judge Stein received from the *New Mexico UFCW* plaintiff a letter stating that it had "designated the case as 'related' to" the MDL proceeding "in error" because *New Mexico UFCW* is a "RICO and consumer protection case" and requesting that the case be assigned to a judge randomly. (Ex. 12.) Neither the initial "related" designation nor the letter reversing that designation was served on Purdue. Judge Stein

granted the *ex parte* request for random assignment in a handwritten note on the letter (*id.*),<sup>1</sup> and the action was subsequently assigned to Judge Koeltl (Ex. 13). The docket entries for the *New Mexico UFCW* action indicate that a court employee designated it “declined as not related” by Judge Stein and that it was assigned randomly to Judge Koeltl. (Ex. 14.)

Purdue is requesting Judges Koeltl and Stein to reassign *New Mexico UFCW* to Judge Stein as a related case. However, even if that case remains before Judge Koeltl, this case should be transferred to Judge Stein. Five putative class actions pending before Judge Stein in the MDL proceeding (i) include comparable marketing allegations, (ii) seek the same damages (recovery of the alleged overpayments for OxyContin), and (iii) arise under the same states’ consumer protection statutes and doctrines of unjust enrichment. Further, the MDL proceeding includes numerous other actions, on behalf of putative nationwide classes that subsume the putative class here, that seek to recover TPPs’ alleged overpayments for OxyContin. Accordingly, this case should be transferred to Judge Stein, regardless of where *New Mexico UFCW* is finally assigned.

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<sup>1</sup> Judge Stein had declined to accept the initial *New Mexico UFCW* complaint through a similarly ministerial act.

Respectfully submitted,

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August 30, 2007

/s Jason A. Snyderman

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**CERTIFICATE OF SERVICE**

I, Jason A. Snyderman, hereby certify that on this 30th day of August, 2007, a true and correct copy of Supplement To Defendants' Motion To Transfer This Action To The Southern District Of New York was served upon the following via CM/ECF and U.S. Mail:

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/s/ Jason A. Snyderman